UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEXANDER STROSS **Plaintiff,** **vs.** **RIVER'S EDGE REALTY, LLC d/b/a AUSTIN OPTIONS REALTY; DANIEL R. CASTRO & ALISHA AUSTIN** **Defendant**	**CIVIL ACTION # 1:17-cv-391** **JURY DEMANDED**

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Alexander Stross respectfully alleges as follows for his complaint against Defendants Austin Options Realty, Daniel Castro & Alisha Austin.

PARTIES

1. Plaintiff Alexander Stross ("Plaintiff" or "Stross") is a resident of Austin, Texas.

2. Defendant Rivers Edge Realty, LLC d/b/a Austin Options Realty ("AOR") is a Texas limited liability company and real estate brokerage. AOR's principal office is at 7800 Shoal Creek Blvd., Suite 100N, Austin, Texas 78757. The Texas Secretary of State identifies Daniel R. Castro as the registered agent for River's Edge Realty, with an address of 9433 Bee Caves Rd., Bldg. 1, Ste. 140, Austin, Texas 78733.

3. Upon information and belief, Defendant Daniel R. Castro ("Castro") is a resident of Austin, Texas and may be served at 10509 Pointe View, Austin, Texas 78738 and/or the offices of AOR at 7800 Shoal Creek Blvd., Suite 100N, Austin, Texas 78757.

4. Upon information and belief, Defendant Alisha Austin ("Austin") is a resident of Round Rock, Texas and may be served at 2244 Settlers Park Loop, Round Rock, TX 78665-4638 and/or the offices of AOR at 7800 Shoal Creek Blvd., Suite 100N, Austin, Texas 78757.

NATURE OF THE CLAIMS

5. This is an action for copyright infringement under 17 U.S.C. § 101 *et seq*. and violations of the Digital Millennium Copyright Act ("DMCA"), arising in connection with Defendants' unauthorized commercial exploitation of fifty two (52) of Plaintiff's federally registered architectural photographs.

JURISDICTION and VENUE

6. This Court has subject matter jurisdiction over this action under 17 U.S.C. §§ 101 *et seq*. (the U.S. Copyright Act); and 28 U.S.C §§ 1331 (federal question) and 1338(a) (copyrights).

7. The Court has personal jurisdiction over the Defendants because they conduct business here in Texas; or, alternatively, because Defendants have availed themselves of the forum, Plaintiff's claims arise out of or result from their forum related activities, and the exercise of jurisdiction is reasonable.

8. Venue is proper under 28 U.S.C. §§ 1391(b)(2) and 1400 because a substantial portion of the events giving rise to this suit occurred in this District, a substantial part of the property at issue is situated in this District, and because the Defendants may be found in this District.

CONDITIONS PRECEDENT

9. All conditions precedent have been performed or have occurred.

BACKGROUND FACTS

10. Plaintiff is an accomplished architectural photographer who has worked with some of the most respected names in Central Texas real estate, including Dick Clark Architecture, Wilson Goldrick Realtors, Gottesman Residential, John Luce Builder, and

Fleetwood USA. Licensed uses of his works have appeared in publications such as *Luxury Home Magazine, Luxe, Refine* and *New Home Guide*; as well as appearing on billboards, online advertising, and on television shows, including the *Today Show*. In addition to the foregoing, Stross is a real estate broker, and formerly operated a real estate brokerage in Austin, Texas called MSI Urban Realty.

10. Defendant AOR is a real estate brokerage located in Austin, Texas. AOR operates a website for the purposes of advertising and selling its own real estate listings, where it advertises itself as a "premier *Austin Home and Real Estate Company.*"

11. Upon information and belief, Dan Castro is the broker of record for AOR, and is identified on AOR's website as follows:

> Dan Castro is a full-time practicing attorney, award-winning author, speaker and business consultant. Dan personally trains each of our Austin real estate agents in all legal aspects of the real estate transaction.[1]

12. Alisha Austin is a real estate agent and broker associate working for AOR, and upon information and belief, received training from Castro.

13. In or around May of 2014, Stross' brokerage MSI Urban Realty acquired four real estate listings from Centerra Homes in the Overlook – a neighborhood in Rough Hollow, which is situated in Lakeway, Texas. MSI Urban's agent Brittany Murphy acted as the listing agent for the properties. In or around early, 2015, Stross took new photographs of the homes, and on February 3, 2015, uploaded the photographs into the Austin multiple listing service ("MLS") for

[1] *See* http://www.austinoptionsrealestate.com/?page_id=402&phpMyAdmin=d02e141fa2f6e153517c2a1d57993512.

purposes of facilitating MSI Urban's marketing efforts. All photographs were timely registered with the U.S. Copyright Office in Stross' name.[2]

14. About a week after the photographs were uploaded into the Austin MLS, the relationship between MSI Urban Realty and Centerra Homes terminated, and Stross withdrew the listings, including the photographs at issue. Upon information and belief, AOR subsequently obtained the listings from Centerra, with Alisha Austin acting as the listing agent.

15. Upon information and belief, on February 11, 2015, Austin and/or AOR created new listings for the properties in the Austin MLS. Instead of obtaining their own photographs of the properties, Austin and/or AOR uploaded Stross' photographs with the listings. In addition, Austin and/or AOR uploaded the photographs onto the AOR website, and a personal website utilized by Austin – all for purposes of marketing and promotion. Upon information and belief, Austin and/or AOR also purported to "license" the photographs to various third party websites such as *Trulia* and *Zillow* – also for the purpose of marketing and promotion. Finally, at least one of the photographs appeared in a promotional mailer for Rough Hollow – presumably at Austin and/or AOR's direction. Neither Austin nor AOR sought Stross' permission for their use of the photographs. Moreover, in each of the foregoing instances, conspicuous copyright notices identifying Stross as the owner of the photographs were removed from the photographs in an apparent effort to facilitate and/or conceal the Defendants' unauthorized use of same.

16. On or about August 5, 2015, Stross forwarded correspondence to AOR asking it to identify the person or persons who uploaded the photographs for two of the listings at issue into the Austin MLS. AOR never responded to the inquiry.

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[2] *See* **Exhibit A** (two copyright registration certificates covering the photographs at issue, registered ion January 27, 2015 and February 3, 2015).

17. Upon information and belief, one or more of the properties at issue were sold utilizing Stross' photographs – generating significant commissions for AOR, Castro and Austin. In connection, there can be little doubt that Stross' photographs were a critical component of Defendants' marketing efforts inasmuch as real estate photography is widely regarded as ***the*** most important tool utilized by realtors to sell homes.[3]

18. On or about March 27, 2017, Stross forwarded a notice and demand letter to Austin related to her unauthorized use of Stross' photographs. After failing to receive a response, Stross' counsel placed several calls to Austin – all of which went unanswered. Finally, on April 11, 2017, Castro wrote to Stross' counsel, claiming to be Austin's "attorney." Castro suggested that there was no copyright infringement because the photographs were obtained from Centerra Homes, and – according to Castro – Austin "was not legally obligated to go behind the scenes to determine if the builder had permission to send her the photos before she posted them to MLS."

19. Contrary to Castro's assertion, the rules applicable to Austin and all other members of the Austin MLS required her to represent and warrant that she owned all rights and title in the photographs,[4] and therefore ***did*** require her to vet ownership rights. Clearly, Austin did not "own" Stross' photographs. Moreover, had she bothered to ask, she would have learned that Centerra Homes had no rights in them either. Centerra didn't pay for the photographs, and didn't obtain any assignment of rights from Stross. Instead, the photographs were created by

[3] *See, e.g.*, Laure Ure, *6 Reasons Why a Professional Home Photographer is Worth the Price*, Inman (May 7, 2015) available at: http://www.inman.com/2015/05/07/6-reasons-why-a-professional-home-photographer-is-worth-the-price/ (noting that 92 percent of homebuyers use the Internet as part of their home search, and stating "the single most important factor in selling a home is good photography.").

[4] *See* ABOR Rules and Regulations, Section 7.10, available at http://www.abor.com/abor_resource/mls-rules-2/.

Stross solely to facilitate MSI Urban's sales efforts, and were registered in Stross' name at the U.S. Copyright Office. Perhaps most importantly, the photographs bore copyright notices identifying Stross as the owner – not Centerra – thereby placing AOR, Austin and Castro on notice of the person from whom rights should have been obtained prior to using the photographs in any manner whatsoever.

20. In short, the Defendants' use of Plaintiffs photographs was entirely unauthorized. Worse, the circumstances suggest that the photographs were altered in an effort to conceal the Defendants' wrongful actions and/or facilitate the same, and that – even now – the Defendants refuse to take any responsibility.

21. Stross now brings this suit for copyright infringement.

COUNT I:
COPYRIGHT INFRINGEMENT

22. Plaintiff realleges and incorporates herein the foregoing paragraphs.

23. By their actions alleged above, Defendants AOR and Austin have infringed Plaintiff's federally registered copyrights. Specifically, by copying, distributing and/or displaying Stross' photographs in the Austin MLS and on their websites, AOR and Austin have infringed Plaintiff's exclusive rights set forth in 17 U.S.C. § 106, and are liable therefor.

24. Upon information and belief, Castro is the dominant influence in AOR, and determined and/or directed the policies that led to the infringements complained of herein. Accordingly, Castro is jointly and severally liable for direct copyright infringement. *See Broad. Music, Inc. v. It's Amore Corp.*, No. 3:08CV570, 2009 WL 1886038 (M.D. Pa. June 30, 2009), citing *Sailor Music v. Mai Kai of Concord, Inc.*, 640 F. Supp. 629, 634 (D.N.H.1984).

25. Defendants' actions constituted willful infringement of Plaintiff's copyrights inasmuch as they knew, or had reason to know, that their actions constituted copyright infringement; and/or because they acted with reckless disregard of Plaintiff's copyrights.

26. As a result of the foregoing, Plaintiff is entitled to actual damages plus profits of the Defendants; and/or statutory damages of up to $150,000 per work infringed, plus attorney's fees and costs of court, for which Defendants are liable. 17 U.S.C. §§ 504, 505.

COUNT II
VICARIOUS COPYRIGHT INFRINGEMENT

27. Plaintiff realleges and incorporates herein the foregoing paragraphs.

28. By their actions alleged above, Defendants AOR and Castro have vicariously infringed Plaintiff's copyrights. Upon information and belief, in their role as brokerage of record and listing broker (respectively), Defendants had the right and/or ability to supervise and/or control Austin's advertising activities – including her unlawful use of Plaintiff's photographs. Upon further information and belief, Defendants AOR and Castro derived significant profits directly from those infringing activities, and have therefore committed vicarious infringement.

29. Defendant AOR and Castro's actions constituted willful infringement of Plaintiff's copyrights inasmuch as they knew, or had reason to know, that their actions constituted copyright infringement; and/or because they acted with reckless disregard of Plaintiff's copyrights.

30. As a result of the foregoing, Plaintiff is entitled to actual damages plus profits of Defendants AOR and Castro; and/or statutory damages of up to $150,000 per work infringed, plus attorney's fees and costs of court, for which Defendants are liable. 17 U.S.C. §§ 504, 505.

COUNT III
CONTRIBUTORY COPYRIGHT INFRINGEMENT

31. Plaintiff realleges and incorporates herein the foregoing paragraphs.

32. By their actions alleged above, Defendants AOR and Castro have contributorily infringed Plaintiff's copyrights. Upon information and belief, Defendants AOR and Castro induced, caused and/or materially contributed to Austin's infringing conduct by, *inter alia*, designing, selecting, approving, overseeing and facilitating the on-line marketing and advertisement of Austin's real estate listings, and the use of Plaintiff's content therein.

33. Defendant AOR and Castro's actions constituted willful infringement of Plaintiff's copyrights inasmuch as they knew, or had reason to know, that their actions constituted copyright infringement; and/or because they acted with reckless disregard of Plaintiff's copyrights.

34. As a result of the foregoing, Plaintiff is entitled to actual damages plus profits of Defendants AOR and Castro; and/or statutory damages of up to $150,000 per work infringed, plus attorney's fees and costs of court, for which Defendants are liable. 17 U.S.C. §§ 504, 505.

COUNT IV:
FALSE COPYRIGHT MANAGEMENT INFORMATION

35. Plaintiff realleges and incorporates herein the foregoing paragraphs.

36. By their actions alleged above, Defendants have violated Section 1202 of the Digital Millennium Copyright Act by removing Plaintiff's so-called copyright management information ("CMI"), consisting of his copyright notices. Upon information and belief, Defendants' actions were committed knowingly, and with the intent to induce, enable, facilitate and/or conceal infringement.

37. As a result of the foregoing, Plaintiff is entitled to actual damages plus the profits of Defendants; or in the alternative, statutory damages for each violation in an amount no less than $2,500 and no more than $25,000, plus costs and attorney's fees. 17 U.S.C. § 1203(b)(4), (5) & (c).

Jury Demand

38. Plaintiff asserts his rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

Prayer

Plaintiff prays for:

A. An order that Defendants and all persons under their direction, control, permission or authority be enjoined and permanently restrained from exploiting the photographs at issue;

B. For each work infringed, an award of actual damages and/or statutory damages under 17 U.S.C. § 504(c);

C. For each violation of the Digital Millennium Copyright Act, an award of statutory damages under 17 U.S.C. § 1203(c);

D. An award to Plaintiff of his reasonable costs and attorney's fees under 17 U.S.C. §§ 505 and 1203(b)(4) & (5);

E. Prejudgment and post-judgment interest on any damage award as permitted by law; and

F. Such other and further relief as the Court may deem just, proper and/or necessary under the circumstances.

Dated this 1st Day of May, 2017

LAW OFFICE OF BUCK MCKINNEY, PC

/s/ R. Buck McKinney
R. Buck McKinney
State Bar No. 00784572
408 W. 11th St., Fifth Floor
Austin, Texas 78701
Telephone: 512/236-0150
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mckinney@buckmckinney.com
ATTORNEY FOR PLAINTIFF ALEXANDER STROSS

EXHIBIT A

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VAu 1-201-670
Effective Date of Registration:
January 28, 2015

Title

Title of Work: 6735 unpublished individual photographs Vol. 1, January 2015

Completion/Publication

Year of Completion: 2015

Author

- **Author:** Alexander Bayonne Stross
  Author Created: photograph
  Citizen of: United States
  Domiciled in: United States
  Year Born: 1976

Copyright Claimant

Copyright Claimant: Alexander Bayonne Stross
210 Lavaca St #1901, Austin, TX, 78701, United States

Rights and Permissions

Name: Alexander Bayonne Stross
Email: info@strossarts.com
Telephone: (512)586-1648
Address: 210 Lavaca St #1901
Austin, TX 78701 United States

Certification

Name: Alexander Bayonne Stross
Date: January 27, 2015

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Registration #: VAu001201670
Service Request #: 1-2091933061

Alexander Bayonne Stross
210 Lavaca St #1901
Austin, TX 78701 United States

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Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

Registration Number
VAu 1-201-812
Effective Date of Registration:
February 03, 2015

Title

Title of Work: 1954 Unpublished individual photographs Vol 3, Feb 2015

Completion/Publication

Year of Completion: 2015

Author

- **Author:** Alexander Bayonne Stross
  Author Created: photograph
  Citizen of: United States
  Domiciled in: United States
  Year Born: 1976

Copyright Claimant

Copyright Claimant: Alexander Bayonne Stross
210 Lavaca St #1901, Austin, TX, 78701, United States

Rights and Permissions

Name: Alexander Bayonne Stross
Email: info@strossarts.com
Telephone: (512)586-1648
Address: 210 Lavaca St #1901
Austin, TX 78701 United States

Certification

Name: Alexander Bayonne Stross
Date: February 03, 2015

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Registration #: VAu001201812
Service Request #: 1-2111750041

Alexander Bayonne Stross
210 Lavaca St #1901
Austin, TX 78701 United States

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